

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #8	CCRB Case #: 201606384	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/11/2016 8:50 PM	Location of Incident: Outside 438 W. 18th Street	Precinct: 10	18 Mo. SOL 9/11/2017	EO SOL 9/11/2017	
Date/Time CV Reported Fri, 07/22/2016 5:50 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/22/2016 5:50 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT2 Joseph Franco	07972	925313	NARCBMS
2. DT3 Herbert Medina	00602	943560	NARCBMS
3. SGT Shannon Brooks	01365	927964	034 DET
4. DT3 Edwin Cabrera	5166	946811	NARCBMS
5. POM Mohammed Donzo	07534	948907	DBMS
6. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Robert Garland	2072	947020	NARCBMS
2. LT Fabian Sanchez	00000	932211	NARCBMS

Officer(s)	Allegation	Investigator Recommendation
A.DT2 Joseph Franco	Abuse: Detective Joseph Franco stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Shannon Brooks	Abuse: Sergeant Shannon Brooks stopped the vehicle in which § 87(2)(b) was an occupant.	
C.DT2 Joseph Franco	Force: Detective Joseph Franco pointed his gun at § 87(2)(b)	
D.SGT Shannon Brooks	Abuse: Detective Shannon Brooks drew his gun.	
E.DT3 Herbert Medina	Abuse: Detective Herbert Medina interfered with § 87(2)(b)'s use of a recording device.	
F.DT3 Herbert Medina	Abuse: Detective Herbert Medina seized § 87(2)(b)'s cell phone.	
G.DT2 Joseph Franco	Abuse: Detective Joseph Franco searched § 87(2)(b)	
H.DT2 Joseph Franco	Abuse: Detective Joseph Franco frisked § 87(2)(b)	
I.DT3 Herbert Medina	Abuse: Detective Herbert Medina frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J. Officers	Abuse: Officers searched § 87(2)(b) and § 87(2)(b)	
K. Officers	Abuse: Officers frisked § 87(2)(b) and § 87(2)(b)	
L.DT2 Joseph Franco	Abuse: Detective Joseph Franco searched the vehicle in which § 87(2)(b) was an occupant.	
M.SGT Shannon Brooks	Abuse: Sergeant Shannon Brooks searched the vehicle in which § 87(2)(b) was an occupant.	
N.DT3 Herbert Medina	Abuse: Detective Herbert Medina refused to provide his shield number to § 87(2)(b)	
O.SGT Shannon Brooks	Abuse: Sergeant Shannon Brooks refused to provide his shield number to § 87(2)(b)	
P.DT3 Edwin Cabrera	Abuse: Detective Edwin Cabrera refused to provide his shield number to § 87(2)(b)	
Q.POM Mohammed Donzo	Force: Police Officer Mohammed Donzo used physical force against § 87(2)(b)	

Case Summary

On March 11, 2016, at approximately 8:50pm, in front of 438 W 18 Street in Manhattan, Detective Joseph Franco and Sergeant Shannon Brooks, both of Manhattan South Narcotics, stopped a black Mustang driven by § 87(2)(b) and occupied by § 87(2)(b) and § 87(2)(b) (**Allegations A and B**). § 87(2)(b) alleged that Det. Franco had his gun pointed as he approached the vehicle (**Allegation C**) and that Sgt. Brooks had his gun drawn (**Allegation D**). Detectives Herbert Medina and Edwin Cabrera arrived on the scene shortly thereafter. As § 87(2)(b) attempted to record the incident with his phone, Det. Medina seized the phone (**Allegations E and F**). He returned it after the car stop was completed.

Sgt. Brooks ordered all of the occupants to exit the vehicle. Det. Franco ordered § 87(2)(b) to empty his pockets (**Allegation G**) and Det. Franco and Det. Medina then frisked § 87(2)(b) (**Allegations H and I**). Other officers on the scene made the same request of all the occupants of the vehicle (**Allegations J and K**). Det. Franco and allegedly Sgt. Brooks then searched § 87(2)(b)'s vehicle (**Allegation L and M**).

After searching the vehicle for approximately five minutes, Sgt. Brooks and Det. Franco told everyone that they were free to leave. § 87(2)(b) returned to his Mustang, but then exited to ask Det. Medina for his shield number, since Det. Medina had seized his phone. Det. Medina allegedly refused to provide this information (**Allegation N**) and § 87(2)(b) then addressed all the officers on the scene and asked for everyone's shield number. Allegedly, only Det. Franco responded (**Allegations O, P, and Q**).

§ 87(2)(b) was subsequently arrested for jumping on the hood of Det. Medina's vehicle as Det. Medina was leaving the scene. § 87(2)(b) alleged that PO Mohammed Donzo stuck his fist in his face as he was about to place him in the prisoner van (**Allegation R**).

§ 87(2)(b) filed this complaint in July, four months after the incident happened. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) There is no video associated with this case.

Mediation and Criminal Histories

§ 87(2)(b) rejected mediation. § 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- Detective Joseph Franco has been a subject in two previous cases with seven allegations.
§ 87(2)(g)
- Detective Herbert Medina has been a subject in four previous cases with seven allegations plead against him. § 87(2)(g)
- Sergeant Shannon Brooks has been a subject in nine previous cases with 11 allegations plead against him. § 87(2)(g)
- Detective Edwin Cabrera has been a subject in six previous cases with 12 allegations plead against him. § 87(2)(g)

Potential Issues

After numerous contact attempts, the occupants of § 87(2)(b)'s vehicle did not cooperate with the investigation.

Findings and Recommendations

Allegation A: Detective Joseph Franco stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B: Sergeant Shannon Brooks stopped the vehicle in which § 87(2)(b) was an occupant.

The following facts are undisputed. Prior to the stop, § 87(2)(b) and a passenger had driven to and patronized a deli near W. 25th Street and 8th Avenue; that the Mustang was subsequently stopped on the suspicion that § 87(2)(b) and the passenger had engaged in a narcotics transaction inside the deli; that upon being stopped, all four occupants were removed, frisked, and searched; and that the vehicle itself was then searched.

§ 87(2)(b) stated that he and § 87(2)(b) entered the deli briefly, made several purchases, and then exited, at which point they happened to run into his brother § 87(2)(b) and his friend § 87(2)(b). § 87(2)(b) stated that he, his brother, § 87(2)(b) and § 87(2)(b) got into the Mustang and drove south to his residence at the Chelsea Houses on W. 19th Street, unaware that they were being followed. § 87(2)(b) stated that he had not consumed any drugs or alcohol that night. While travelling down W. 18th Street, a one-way road, § 87(2)(b) suddenly noticed an unmarked police vehicle behind him with its lights and sirens engaged; he immediately pulled over and double-parked at the middle of the block. (BR01)

Regarding § 87(2)(b) Det. Franco testified to the following events: he stated that he was standing outside a deli at W. 25th St. and 8th Avenue, alone and on foot, awaiting word that buys had been secured for the next slated actions at the Chelsea Houses; while standing by, he happened to notice § 87(2)(b)'s black Mustang double-parked in front of the deli, with four male occupants. Det. Franco stated that his attention was initially drawn to the Mustang by "nothing in particular,"

but continued watching it from his stationary position for several minutes, until the driver (identified as § 87(2)(b) and the front-seated passenger (described as a slim black male) exited the vehicle. Det. Franco stated that just prior to the exit, he saw § 87(2)(b) reach “into the middle console” and remove “an item.” § 87(2)(b) and the passenger then entered the deli. Det. Franco never saw the item he believed § 87(2)(b) had retrieved; he was unclear about whether he could see into the vehicle; he did not recall if the windows were rolled down; and when § 87(2)(b) passed him, he only saw one of his hands, which was empty. (BR02)

Det. Franco stated that there was “nothing particularly suspicious” about the men at that point time, but decided to follow them inside after waiting for a minute. He described the store as medium-sized and well-lit, with several customers inside. Once inside, he soon found § 87(2)(b) and the passenger at the rear of an aisle talking with two other black men, one wearing grey. Det. Medina stood by the cashier’s counter approximately ten to fifteen away and watched the interaction, which quickly developed into what he stated was a hand-to-hand drug transaction: the man in grey handed cash to § 87(2)(b) who took the cash and handed him something in exchange. Det. Franco stated that he was unable to see what § 87(2)(b) actually handed the male, who he presumed was the buyer; he did not know what the buyer did with the object, or what § 87(2)(b) did with the cash; and he did not recall anything notable about the quantity or appearance of the transferred notes, which were not bundled. As the parties exchanged, Det. Franco remained at the counter, acting as if he was making a purchase; he never attempted to approach them any closer, stating that he was trying to “make sure they don’t recognize me.” (BR02)

When all four men then exited the deli without purchasing any items, Det. Franco did the same. Once outside, the buyers left the scene on foot, and § 87(2)(b) and his passenger returned to their seats inside the Mustang. Det. Franco stated that he was confident, due to his experience as a narcotics officer, that what he had seen was a drug transaction, and promptly radioed the same to his teammates. Det. Franco stated that § 87(2)(b) had reached back into the center console upon re-entering, but did not see him deposit any objects there, and did not see if the received cash was stowed away anywhere.

Soon after his radio relay, Sgt. Brooks arrived at the scene in an unmarked blue Subaru, just as the Mustang began to pull away. Det. Franco got in and recapped his observations as Sgt. Brooks followed the Mustang. Sgt. Brooks then quickly coordinated an investigation, assigning a unit to stop the buyers, and requesting backup to stop the Mustang. Det. Franco then radioed the Mustang’s color, real-time location, direction of movement, and (possibly) its license plate number. Upon doing so, Det. Medina responded by radio with the following remark: “those guys are the gang members from Chelsea.”

Det. Franco noted that the vehicle had a defective front headlight. When asked how he was able to observe this from behind, he noted that there were two other teams involved in the pursuit and they were putting over their observations. Det. Franco did not observe any other traffic infractions prior to the stop.

Det. Franco and Sgt. Brooks ultimately stopped the Mustang outside 433 W. 18th St., after backup was secured (but not yet present on scene). Det. Franco acknowledged approaching the vehicle with his firearm drawn because he was conducting a “felony stop” to investigate the hand-to-hand. The occupants were subsequently removed, frisked and searched. The Mustang was also searched. Det. Franco stated that he and Sgt. Brooks had initially exercised their discretion and released § 87(2)(b) without a citation. Det. Franco said that he explained to § 87(2)(b) after the vehicle search, that the officers had suspected he was in a drug transaction. Det. Franco stated that he never discussed the defective headlight with § 87(2)(b) at the scene of the stop. After arresting § 87(2)(b) for his subsequent conduct, Det. Franco wrote the traffic ticket at the stationhouse, citing VTL 375-2A(1) (defect as to headlight power source). (BR11)

There is no record of the summons in § 87(2)(b)'s DMV driver's abstract and traffic court conviction history; the March 11, 2016 summons was either dismissed or never filed (BR 10). Det. Franco's handwritten summons states: “at TPO I observed violator/operator with a defective front right light.” The noted occurrence time/location is the same documented on the arrest report which states: “Deft was stop for a VTL violation, defendant became disorderly and obstructed government admin...” (*sic*, see image below) (BR 11)

Sgt. Brooks generally corroborated Det. Franco's account of the incident, but added that the Mustang had also made turns during the follow without signaling. (BR04)

Det. Medina and Det. Cabrera stated they responded to W. 18th St. after Sgt. Brooks radioed for backup at the location, advising that he and Det. Franco were conducting a vehicle stop. Both Det. Medina and Det. Cabrera also stated that they had no previous visual contact with the vehicle or its occupants.

Det. Medina, who referred to himself as one of the senior investigators on the team, stated that when the Mustang was first described by Det. Franco, he immediately recalled that a black Mustang had been the subject of a past narcotics investigation, closed after it yielded no actionable intelligence. During the stop, he noticed that the Mustang was distressed: it was “duct-taped” together in general disrepair and its headlights were non-functioning. (BR03)

Det. Cabrera stated that no descriptive information whatsoever – regarding the vehicle, its occupants, or the reason for the stop – was relayed in the initial request for backup, and that neither he nor Det. Medina radioed any relevant information in response. However, Det. Cabrera realized upon arriving at the scene that he recognized § 87(2)(b) as the subject of prior narcotics investigations; he knew from field intelligence that § 87(2)(b) as a suspected crack cocaine dealer, and as affiliated with gangs at the Fulton Houses. Det. Cabrera also said that he was generally aware, from past investigations run by other Narcotics modules, that the Mustang there had been previously identified as a narcotics courier vehicle associated with § 87(2)(b) and his gang connections. (BR 06)

It is well established that “police stops of automobiles in this State are legal only pursuant to routine, non-pretextual traffic checks to enforce traffic regulations or when there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime,” or “where the police have probable cause to believe that the driver . . . has committed a traffic violation.” (People v Robinson, 122 AD3d 1282 [4th Dept

2014]) (BR 17) In *People v. Barreto*, the court noted – with italics for emphasis – that a stop is authorized “when *that* officer reasonably suspects that a crime is being committed...” (*People v. Barreto*, 161 AD2d 305 [1st Dept 1990].) (BR 16)

Reasonable suspicion has been defined as “that quantum of knowledge sufficient to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is at hand.” In a drug-prone location, “tell-tale signs of drug activity” can generate reasonable suspicion when there is an observed pattern of behavior – “furtive transfers” of money or glassine envelopes, steering of potential buyers, concealment of unidentified objects, or flight. (*People v. King*, 200 A.D.2d 487 (1994)). (BR 14) However, “behavior which is susceptible of innocent as well as culpable interpretation, will not constitute probable cause”. (*People v. De Bour*, 40 N.Y.2d 210, 223 (1976)) (BR 15) An investigative detention is justified at its inception when, based upon the ‘totality of the circumstances the whole picture,’ the police have a particularized and objective basis for suspecting the particular person stopped of criminal activity.” (*People v. Hicks*, 116 AD2d 150, 151 [4th Dept 1986].) (BR21)

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Detective Joseph Franco pointed his gun at § 87(2)(b)

Allegation D: Detective Shannon Brooks drew his gun on § 87(2)(b)

Allegation E: Detective Herbert Medina seized § 87(2)(b) s cell phone.

Allegation F: Detective Herbert Medina interfered with § 87(2)(b) s use of a recording device.

It is undisputed that Det. Franco displayed his gun and that Det. Medina seized § 87(2)(b) s phone during the initial moments of the vehicle stop.

§ 87(2)(b) s account of the initial engagement was inconsistent: he initially stated that both Sgt. Brooks and Det. Franco approached with their guns pointed at his vehicle; upon further questioning, he vacillated on the attendant details and ultimately stated that Sgt. Brooks may not have had his gun displayed when he reached the driver's side window. § 87(2)(b) maintained that Det. Franco, by the passenger side window, had his gun pointed at him and the other occupants collectively. Per § 87(2)(b) neither officer gave commands on approach; when they reached the vehicle, Sgt. Brooks instructed him to turn off the ignition and place his hands on the steering vehicle, as Det. Franco instructed the other occupants to raise their hands; everyone complied immediately with these commands. When Sgt. Brooks then asked § 87(2)(b) for his license, registration, and insurance, § 87(2)(b) advised that they were in his glove compartment; he then retrieved and handed the documents to Sgt. Brooks without delay or argument. Soon after § 87(2)(b) handed over his documents, Det. Medina and Det. Cabrera (having just arrived) exited their vehicle and approached the Mustang, Det. Medina at the driver's side with Sgt. Brooks and Det. Cabrera at Det. Franco's side. At this time, § 87(2)(b) took his cell phone, a Samsung Galaxy – which had thus far been sitting on the dashboard in front of him – and attempted to begin video recording the police encounter. § 87(2)(b) stated that he had the phone held in his right hand: his arm was fully extended downwards at a declension by the center console, positioned so he could frame and record himself – as he put it, in the manner of a “selfie.” When he did so, before he was able to activate his recording, Det. Medina suddenly opened the door without warning, reached inside, and grabbed the cell phone out of § 87(2)(b) s hand. In response, § 87(2)(b) said “what are you doing, that's not how you treat people.” Sgt. Brooks then ordered all four men to exit and move to the rear of the Mustang. (BR01)

The officers jointly testified that there had been a recent shooting at the Chelsea Houses, and that the perpetrators were still at large. Det. Medina, who stated that the shooting victim was a subject

in one of his active cases, said that the module – though focused on narcotics enforcement – were also trying to assist in the shooting investigation; he recalled no strategic deployments or coordination with other detective squads; he did not suggest any the operational adjustments to the buy and busts. (BR03) The undersigned investigator verified that on March 8, 2016, an individual was shot at the Chelsea Houses. No fatalities were reported. Per COMPSTAT year to incident-date data for the 10th Precinct (January 1 – March 11, 2016), 11 complaint reports were filed alleging weapons possession (4 categorized as felonies, 1 in early March). Yearly 10th Precinct totals report 1 shooting incident in 2015 and 2 in 2016; the adjacent 13th and Midtown South precincts together totaled 10 shootings in the past two years. (BR 12)

Det. Franco acknowledged approaching the vehicle with his firearm drawn because he was conducting a “felony stop” to investigate the hand-to-hand. Det. Franco drew his weapon for safety when he saw the occupants making furtive movements. He saw the rear passenger on the right reaching under the seat. He also couldn’t see any of their hands and had to order them to show their hands three to four times before they complied, at which time he holstered his gun.

Det. Franco observed § 87(2)(b) in the driver's seat, reaching toward the center console area. He couldn’t recall details of this motion other than noting that § 87(2)(b) was reaching in the middle area. Det. Franco was unclear as to whether his gun was pointed at the occupants, individually or collectively. § 87(2)(b) was uncooperative and verbally combative from the beginning; § 87(2)(b) then continued to yell at him with his hands displayed, asking “why were you pointing your gun at me?” Det. Franco did not recall if Sgt. Brooks had drawn his gun.

When § 87(2)(b) was then asked for his license, he remained loud and combative – he questioned the vehicle stop and did not immediately provide his ID. At that point, Det. Franco and Sgt. Brooks ordered all four men to exit the vehicle. (BR02)

Sgt. Brooks stated that he never drew his weapon, and did not recall if Det. Franco did. Furthermore, Sgt. Brooks stated that he observed none of the furtive movements described by Det. Franco: that when he reached the driver’s side window, all four occupants were stationary; that they complied when he asked them to show their hands; and that § 87(2)(b) provided all requisite documentation without disagreement or delay. (BR04)

Det. Medina acknowledged seizing § 87(2)(b)’s phone and explained it as follows: when he joined Sgt. Brooks by the driver’s side door, he found § 87(2)(b) in the driver’s seat, being combative and non-compliant with Sgt. Brook’s repeated instructions to produce his driver’s license and to put down his phone. Det. Medina stated that § 87(2)(b) was holding his wallet in one hand and his phone in § 87(2)(b) however, he flatly refused to provide his ID, and did nothing to suggest that he was going to remove it from his wallet, countering Sgt. Brook’s orders with questions challenging the vehicle stop. Simultaneously, § 87(2)(b) was also actively “fumbling” with the phone. Det. Medina stated that § 87(2)(b) never pointed the cell phone toward the officers, and did not know what § 87(2)(b) was doing with the phone, stating: “he wasn’t on a call, I don’t know what he was doing on the phone – at that point, I don’t know if he was trying to place a phone call or trying to record.”

Given his refusal to drop his phone and produce ID, Det. Medina eventually reached into the vehicle through the driver’s window and removed the phone from § 87(2)(b)’s hand, telling him:

“get out of the car, there’s no need to record, there’s no need to be on the phone – we gotta do what we gotta do, so you can be on your way.” § 87(2)(b) was upset when the phone was confiscated, but did not specifically indicate any further what he was trying to do with the phone. Det. Medina did not know if the other occupants had been moving around also, and approximated that he engaged § 87(2)(b) for approximately a minute before taking his phone. According to Sgt. Brooks and Det. Franco, none of the above happened – neither recalled any issues concerning § 87(2)(b)’s phone, and were highly unclear about Det. Medina’s presence and involvement at the scene. As before, Lt. Sanchez recalled nothing about this aspect of the incident.

Following the federal government, New York is rare to find issue with an officer’s decision to display their firearm in a traffic stop context, by virtue of the attendant dangers involved in any such encounter. People v Livigni, 88 AD2d 386 [2nd Dept 1982].) Furthermore: “the drug trade often engenders situations of extreme violence and danger to law enforcement officers,” and that narcotics transactions frequently involve armed criminals... (People v Harrill, 19 Misc 3d 1141[Sup Ct, NY County 2008].) Per the applicable OATH precedent: “The cases do not appear to make a distinction between the drawing of a firearm and the pointing of it in situations where drawing a gun was found to have been reasonable in ordering a person out of a car in the course of investigating a traffic infraction or criminal activity. “The policy of the Department is that an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety...[with], broad discretion to display his weapon...[misconduct determination] must be made by assessing the reasonableness of the officer’s actions in the totality of the surrounding circumstances.”

Under the Fourth Amendment, seizure of personal property is per se unreasonable: the limitations applicable to the seizure of a person also define the seizure of one’s personal effects; a temporary seizure is still an “intrusion” on the owner’s possessory interests,” unjustified without reasonable suspicion or probable cause. (United States v. Place, 462 U.S. 696 (1983)) Under the First Amendment, a civilian has the constitutional right to document public police encounters, particularly as an observer; time, place, and matter restrictions apply.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation G: Detective Joseph Franco searched § 87(2)(b)

Allegation H: Detective Joseph Franco frisked § 87(2)(b)

Allegation I: Detective Herbert Medina frisked § 87(2)(b)

Allegation J: Officers searched § 87(2)(b) **and** § 87(2)(b)

Allegation K: Officers frisked § 87(2)(b) **and** § 87(2)(b)

§ 87(2)(b) alleged that after he handed over his documents, Sgt. Brooks ordered all the occupants to exit the vehicle. Sgt. Brooks told § 87(2)(b) to empty his pockets. Det. Franco and/or Det. Medina told the passengers to empty their pockets. Sgt. Brooks then frisked § 87(2)(b). Other officers then frisked the three occupants of the car, but § 87(2)(b) could not specify who frisked whom. None of the occupants cooperated with the investigation. (BR 01)

Sgt. Brooks confirmed that for safety purposes, all of the occupants were asked to exit the vehicle and stand by the rear. He could not recall seeing any bulges on § 87(2)(b) and could not recall if § 87(2)(b) was frisked. (BR 04)

Upon approaching the vehicle, Det. Franco was concerned because he could not see any of the hands of the vehicles occupants. § 87(2)(b) was reaching toward the center console. The passenger in the right rear of the vehicle was reaching under the seat. After three to four requests to show their hands, they finally did. When § 87(2)(b) exited the vehicle, Det. Franco observed a bulge in his front pocket, and he frisked him. The frisk yielded nothing. The bulge felt like a cell phone, but couldn't be sure, because some guns are shaped like cellphones. He did note, however, that earlier in the interaction, when he had initially approached § 87(2)(b) did have his phone out, and he then observed § 87(2)(b) placed the phone in his pocket. He instructed § 87(2)(b) to empty his pockets. Det. Franco believed that he was the only officer involved in patting down the occupants of the vehicle. (BR 02)

Det. Cabrera did not see the occupants of the vehicle being frisked or searched. (BR 06)

Det. Medina stated that § 87(2)(b) was non-compliant as soon as the officers approached the vehicle. § 87(2)(b) was also fumbling with his phone in the vehicle and reaching toward interior panels. After § 87(2)(b) was instructed to exit the vehicle, Det. Medina frisked him for weapons and § 87(2)(b) voluntarily emptied his pockets. Det. Medina frisked § 87(2)(b)'s lower torso and waist area. He frisked § 87(2)(b) because of his earlier furtive movements in the vehicle.

He also frisked another male, but could not recall which one. He stated that Det. Cabrera might have frisked one of the males as well. Det. Medina did not observe any bulges or outlines of weapons prior to frisking the males. (BR 03)

Even when officers encounter a suspect who matches a radio description, the presence of an undefined bulge in a pocket, unlike a waistband bulge or one in the shape of a gun, is considered innocuous and does not provide the basis for a frisk. People v. David B., 172 A.D.2d 828 (2nd Dept. 1991) (BR 19)

§ 87(2)(g)

§ 87(2)(g)

Assuming that the officer acted on reasonable suspicion that criminal activity was afoot and an articulable basis to fear for his safety, he failed to confine the scope of his search to an intrusion reasonably necessary to protect himself from harm [after conducting a search without any prior visual observations of a weapon]. Accordingly, the weapon recovered as a result of an unlawful search should have been suppressed. People v Graham, 2015 N.Y. App Div. Lexis 944; 2015 NY Slip Op 09442 (BR 18)

§ 87(2)(g)

Allegation L: Detective Joseph Franco searched the vehicle in which § 87(2)(b) was an occupant.

Allegation M: Sergeant Shannon Brooks searched the vehicle in which § 87(2)(b) was an occupant.

There is no dispute that Det. Franco searched § 87(2)(b)'s vehicle. § 87(2)(b) alleged that Sgt. Brooks also searched the vehicle.

Det. Franco stated that he was the only officer to search the vehicle. He cited the felony car stop and the fact that the passengers of the vehicle did not immediately show their hands as a reason to

fear for his safety. He also saw the passenger in the right rear of the vehicle reaching under the seat. When Det. Franco searched the vehicle he observed that this area was defective—the seat was off the floor and there was a hole in the floor. (BR 02)

According to Sgt. Brooks, § 87(2)(b) complied with the instructions to turn off the vehicle. All of the occupants of the vehicle were still and stationary. And after a couple of times of giving the order, they all displayed their hands. § 87(2)(b) provided his license when asked and he was not verbally confrontational at the beginning of the incident. Sgt. Brooks did not acknowledge searching the vehicle but believed that Det. Franco searched the vehicle for weapons or narcotics. (BR 04)

Detective Medina only saw Det. Franco search the vehicle. (BR 03)

Under the automobile exception to the general warrant requirement, an officer may search a vehicle only if there is probable cause that it contains contraband, weapon, or evidence of a crime: breaching the plane of a vehicle's doorway constitutes a search People v. Hernandez, 238 A.D.2d 131 (1997). (BR 20)

§ 87(2)(g)

§ 87(2)(g)

Allegation N: Detective Medina refused to provide his shield number to § 87(2)(b)
Allegation O: Detective Edwin Cabrera refused to provide his name and shield number to

§ 87(2)(b)

Allegation P: Sergeant Shannon Brooks refused to provide his name and shield number to

§ 87(2)(b)

When § 87(2)(b) filed this complaint, he only had the name of Det. Franco, his arresting officer.

After being released, § 87(2)(b) returned to his vehicle, but exited to obtain Detective Medina's name. He specifically wanted Det. Medina's name, because he was the officer who had snatched his phone. Det. Medina was returning to his police vehicle when § 87(2)(b) approached and asked for his shield number. Det. Franco walked in front of § 87(2)(b) and provided his own shield number claiming responsibility for the interaction. § 87(2)(b) tried to move around Det. Franco to approach Det. Medina's vehicle, but Det. Franco held him back. At this time, Sgt.

Brooks also approached § 87(2)(b) In response, § 87(2)(b) asked everyone for their shield numbers and believed that all four officers would have heard him. No one responded except Det. Franco. (BR 01)

Detective Medina testified that after he and Det. Cabrera returned to their vehicle, Det. Cabrera placed the vehicle in reverse. § 87(2)(b) approached and asked Det. Medina for his name and shield number. Det. Medina verbally provided this information. § 87(2)(b) asked Det. Medina to write down his information. Det. Medina refused to write down the information, but did repeat it. § 87(2)(b) then approached Det. Medina's vehicle and climbed on top of the hood in what appeared to be an attempt to prevent the vehicle from leaving the scene. (BR 03)

Det. Franco testified that after they released § 87(2)(b) he stood in the middle of the street yelling and refusing to move. He confirmed that § 87(2)(b) asked him for his name and shield and that he provided this information. Det. Franco never saw § 87(2)(b) request information from any other officers. (BR 02)

According to Sgt. Brooks, during the stop, § 87(2)(b) asked Sgt. Brooks to identify himself and Sgt. Brooks provided his name and shield numerous times. Sgt. Brooks even offered to write down this information, but § 87(2)(b) refused this offer. As Sgt. Brooks was in his vehicle, trying to leave the scene, § 87(2)(b) was standing in the middle of the road swearing at the officers and asking for their names. Sgt. Brooks kept repeating his information. (BR 04)

According to Det. Cabrera, after Sgt. Brooks advised § 87(2)(b) that he was free to go, § 87(2)(b) asked Sgt. Brooks and Det. Franco for their shield numbers, which they verbally provided. § 87(2)(b) did not request this information from Det. Cabrera. (BR 06)

§ 87(2)(g)

Allegation Q: Police Officer Mohammed Donzo used physical force against § 87(2)(b)

After Detective Medina's vehicle left the scene, Det. Franco and Sgt. Brooks then shoved § 87(2)(b) onto the hood of his own vehicle, brought him to the ground and handcuffed him. PO Donzo escorted § 87(2)(b) to the prisoner van. As they reached the prisoner van, PO Donzo placed § 87(2)(b)'s chest against the side of the prisoner van and then placed his fist into § 87(2)(b)'s cheekbone, pressing his face for approximately five to ten seconds. PO Donzo was saying something, but § 87(2)(b) could not recall what he was saying. § 87(2)(b) did not think that Det. Franco, Sgt. Brooks or any of the passengers in his vehicle would have seen this.

PO Donzo recalled nothing notable about § 87(2)(b)'s escort into the prisoner van, which was occupied at the time by several other prisoners. PO Donzo eventually transported all of the

prisoners to the 10th Precinct stationhouse but never personally interacted with § 87(2)(b) either verbally or physically. PO Donzo denied making any physical contact with § 87(2)(b) or being discourteous to him in any manner.

§ 87(2)(g)

Squad: 8

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date